IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

BAYCO PRODUCTS, INC.,	§	
	§	
Plaintiff,	§	
	§	CIVIL ACTION NO. ______________
v.	§	
	§	
PHILIPS INTELLECTUAL PROPERTY & STANDARDS, a subsidiary of KONINKLIJKE PHILIPS ELECTRONICS N.V. and U.S. PHILIPS CORPORATION,	§ § § §	A JURY IS DEMANDED
	§	
Defendants.	§	

ORIGINAL COMPLAINT FOR DECLARATORY JUDGMENT

Plaintiff, Bayco Products, Inc. ("Bayco"), files this, its Original Complaint for Declaratory Judgment ("Complaint") against Defendants Philips Intellectual Property & Standards, a subsidiary of Koninklijke Philips Electronics N.V. and U.S. Philips Corporation (collectively Defendant "Philips"), and would respectfully show the Court as follows:

I.

NATURE OF THE CASE

1. Defendant Philips, a multi-billion dollar, multi-national behemoth corporation, seeks to flex its economic muscle by bullying small businesses, like Plaintiff Bayco, to accept paying over-reaching patent royalties to Defendant Philips for patent licenses that do not cover nor relate to the products of Bayco, or face the consequences of litigation. To this end, Plaintiff Bayco seeks a declaration that the asserted Defendant Philips' patents, namely U.S. Patent Numbers 6,234,648, 6,250,774, and 6,692,136 (the "Patents-in-Suit") are invalid and/or not

infringed; that Plaintiff Bayco's alleged infringing products are licensed; and, that the conduct of Defendant Philips warrants finding that this case is exceptional.

II.

PARTIES

2. Plaintiff Bayco Products, Inc. is a corporation organized and existing under the laws of the State of Texas, having offices at 640 S. Sanden Boulevard, Wylie, Texas 75098. Plaintiff Bayco Products, Inc. is sometimes hereinafter referred to as "Bayco."

3. Upon information and belief, Defendant Philips Intellectual Property & Standards, having offices at 3 Burlington Woods Drive, 4th Floor, Burlington, Massachusetts 01803, is a subsidiary of Defendant Koninklijke Philips Electronics N.V., a Dutch corporation and having its offices and principal place of business in Amsterdam, The Netherlands. Defendant U.S. Philips Corporation is a Delaware corporation with its principal place of business at 345 Scarborough Road, Briarcliff Manor, New York. It is believed that all of such entities are related and are hereinafter collectively referred to as Defendant Philips.

III.

JURISDICTION AND VENUE

4. The United States District Court for the Northern District of Texas has original subject matter jurisdiction over this action pursuant to the provisions of 28 U.S.C. § 1331, 1338(a), 2201, and 2202, in that this matter is a civil action arising under the Patent Laws of the United States and seeks relief under the Federal Declaratory Judgment Act.

5. Plaintiff Bayco brings this suit based upon an actual, substantial and continuing justiciable controversy existing between Plaintiff Bayco and Defendant Philips relating to the Patents-In-Suit that requires a declaration of rights by this Court.

6. Venue is proper in the Northern District of Texas pursuant to 28 U.S.C. § 1391 because a substantial part of the events or omissions giving rise to the claims occurred in the Northern District of Texas.

IV.

FACTUAL BACKGROUND

A. The Parties and their Products and Services

7. Plaintiff Bayco's array of lighting products have been the preferred choice of professional and discriminating consumers. Its "Night Stick" product line is the only major brand of flashlight/lighting product that is 100% LED. Over the years, Plaintiff Bayco has now grown to its current 110,000 square foot warehouse, engineering and administrative building in Wiley, Texas. See generally Exhibit A.

8. Upon information and belief, Defendant Philips, is a huge, multi-national corporation, having sales in 2011 of $22,579,000,000 euros (about $30 billion USD), with its lighting sector alone having sales of $7,638,000,000 euros (about $10 billion USD). See selected pages from Defendant's 2011 Annual Report attached hereto as Exhibit B. One of Defendant Philips' espoused key objectives is "Winning in LED"—as its LED Applications and Solutions business grew by 50% in 2011. Defendant Philips purports to be the owner of the Patents-in-Suit as more specifically detailed below.

B. The Patents-in-Suit and Philips' Unlawful Conduct

9. On May 22, 2001, U.S. Patent No. 6,234,648 (the "'648 Patent") entitled "Lighting System" issued, naming U.S. Philips Corporation as its Assignee. A true and correct copy of the '648 Patent is attached to this Complaint as Exhibit C.

10. On June 26, 2001, U.S. Patent No. 6,250,774 (the "'774 Patent") entitled "Luminaire" issued, naming U.S. Philips Corporation as its Assignee. A true and correct copy of the '774 Patent is attached to this Complaint as Exhibit D.

11. On February 17, 2004, U.S. Patent No. 6,692,136 (the "'136 Patent"), entitled "LED/Phosphor-LED Hybrid Lighting Systems" issued, as originally assigned to Philips Electronics North America Corporation and subsequently assigned to Koninklijke Philips Electronics N.V. A true and correct copy of the '136 Patent is attached to this Complaint as Exhibit E.

12. On or about November 28, 2012, Defendant Philips sent Plaintiff Bayco a letter offering to license the Patents-in-Suit to Plaintiff Bayco, for its XPP-5450 Series Dual Function Headlamps (see Exhibit A, pp 3-6, hereafter Bayco's "Headlamp Products") while ominously threatening "While we would prefer to avoid litigation to enforce our patents, if we do not hear from you in a reasonable time, we will assume Bayco Products is not interested in discussing a license with Philips and will proceed accordingly." A true and correct copy of Defendant Philips' letter is attached to this Complaint as Exhibit F.

13. In the ensuing months, Plaintiff Bayco and Defendant Philips exchanged communication, it becoming readily apparent to Plaintiff Bayco that Defendant Philips was seeking to exact ill-deserved royalty payments from Plaintiff Bayco who, during this entire period of time was under the continuing threat of litigation by Defendant Philips.

14. Plaintiff Bayco's Headlamp Products do not infringe, directly or indirectly, or contribute to or induce the infringement of any valid claims of the Patents-in-Suit, or the Patents-in-Suit are invalid because they failed to comply with the conditions and requirements for patentability set forth in 35 U.S.C. § 101 *et seq.* Accordingly, an actual and justiciable

controversy exists between Plaintiff Bayco and Defendant Philips as to the infringement and validity of the Patents-in-Suit.

15. In response to Defendant Philips' November 28, 2012 letter, Plaintiff Bayco informed Defendant Philips that all of Plaintiff Bayco's LED's for its LED flashlight products, including its Headlamp Products, are sourced by Cree (Exhibit A, page 7) and are free from any infringement allegations. It is well known and widely reported in the industry that Defendant Philips has entered into extensive patent cross licensing with Cree concerning LED technology. See generally Exhibit G.

16. In exercising its muscle, Defendant Philips refused upon request to provide Plaintiff Bayco with its patent cross licenses with Cree—simply claiming that they were not applicable, while consistently maintaining a strained claim interpretation for the Patents-in-Suit, in order to exact ill-deserved "tribute" for Defendant Philips proposed patent licenses to Plaintiff Bayco.

V.

COUNT ONE—NON-INFRINGEMENT OF THE '648 PATENT

17. Plaintiff Bayco incorporates by reference the allegations contained in paragraphs 1 through 16 of this Complaint.

18. Defendant Philips has alleged that Plaintiff Bayco's Headlamp Products infringe the '648 Patent. Plaintiff Bayco denies Defendant Philips' allegations of infringement. Plaintiff Bayco's Headlamp Products do not infringe, directly or indirectly, or contribute to or induce infringement of any valid claims of the '648 Patent.

19. Accordingly there exists an actual and justiciable controversy between Plaintiff Bayco and Defendant Philips as to the infringement of the '648 Patent.

20. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, Plaintiff Bayco requests a declaration that its Headlamp Products do not infringe or contribute to or induce the infringement (directly or indirectly, literally or under the doctrine of equivalents) any valid and enforceable claim of the '648 Patent.

VI.

COUNT TWO—DELCARATORY JUDGMENT—INVALIDITY OF THE '648 PATENT

21. Plaintiff Bayco incorporates by reference the allegations contained in paragraphs 1 through 20 of this Complaint.

22. Defendant Philips has alleged that Plaintiff Bayco's Headlamp Products infringe the '648 Patent.

23. Plaintiff Bayco alleges that the claims of the '648 Patent are invalid because they fail to comply with the conditions and requirements for patentability set forth in 35 U.S.C. §§ 101, 102, 103 and/or 112.

24. Accordingly there exists and actual and justiciable controversy between Plaintiff Bayco and Defendant Philips as to the validity of the claims of the '648 Patent.

25. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, Plaintiff Bayco requests a declaration that the claims of the '648 Patent are invalid for failure to comply with one or more requirements of 35 U.S.C. §§ 101, 102, 103 and/or 112.

VII.

COUNT THREE—NON-INFRINGEMENT OF THE '774 PATENT

26. Plaintiff Bayco incorporates by reference the allegations contained in paragraphs 1 through 25 of this Complaint.

27. Defendant Philips has alleged that Plaintiff Bayco's Headlamp Products infringe the '774 Patent. Plaintiff Bayco denies Defendant Philips' allegations of infringement. Plaintiff Bayco's Headlamp Products do not infringe, directly or indirectly, or contribute to or induce infringement of any valid claims of the '774 Patent.

28. Accordingly there exists an actual and justiciable controversy between Plaintiff Bayco and Defendant Philips as to the infringement of the '774 Patent.

29. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, Plaintiff Bayco requests a declaration that its Headlamp Products do not infringe or contribute to or induce the infringement (directly or indirectly, literally or under the doctrine of equivalents) any valid and enforceable claim of the '774 Patent.

VIII.

COUNT FOUR—DELCARATORY JUDGMENT— INVALIDITY OF THE '774 PATENT

30. Plaintiff Bayco incorporates by reference the allegations contained in paragraphs 1 through 29 of this Complaint.

31. Defendant Philips has alleged that Plaintiff Bayco's Headlamp Products infringe the '774 Patent.

32. Plaintiff Bayco alleges that the claims of the '774 Patent are invalid because they fail to comply with the conditions and requirements for patentability set forth in 35 U.S.C. §§ 101, 102, 103 and/or 112.

33. Accordingly there exists and actual and justiciable controversy between Plaintiff Bayco and Defendant Philips as to the validity of the claims of the '774 Patent.

34. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, Plaintiff Bayco requests a declaration that the claims of the '774 Patent are invalid for failure to comply with one or more requirements of 35 U.S.C. §§ 101, 102, 103 and/or 112.

IX.

COUNT FIVE—NON-INFRINGEMENT OF THE '136 PATENT

35. Plaintiff Bayco incorporates by reference the allegations contained in paragraphs 1 through 34 of this Complaint.

36. Defendant Philips has alleged that Plaintiff Bayco's Headlamp Products infringe the '136 Patent. Plaintiff Bayco denies Defendant Philips' allegations of infringement. Plaintiff Bayco's Headlamp Products do not infringe, directly or indirectly, or contribute to or induce infringement of any valid claims of the '136 Patent.

37. Accordingly there exists an actual and justiciable controversy between Plaintiff Bayco and Defendant Philips as to the infringement of the '136 Patent.

38. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, Plaintiff Bayco requests a declaration that its Headlamp Products do not infringe or contribute to or induce the infringement (directly or indirectly, literally or under the doctrine of equivalents) any valid and enforceable claim of the '136 Patent.

X.

COUNT SIX—DELCARATORY JUDGMENT— INVALIDITY OF THE '136 PATENT

39. Plaintiff Bayco incorporates by reference the allegations contained in paragraphs 1 through 38 of this Complaint.

40. Defendant Philips has alleged that Plaintiff Bayco's Headlamp Products infringe the '136 Patent.

41. Plaintiff Bayco alleges that the claims of the '136 Patent are invalid because they fail to comply with the conditions and requirements for patentability set forth in 35 U.S.C. §§ 101, 102, 103 and/or 112.

42. Accordingly there exists and actual and justiciable controversy between Plaintiff Bayco and Defendant Philips as to the validity of the claims of the '136 Patent.

43. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, Plaintiff Bayco requests a declaration that the claims of the '136 Patent are invalid for failure to comply with one or more requirements of 35 U.S.C. §§ 101, 102, 103 and/or 112.

XI.

COUNT SEVEN—DECLARATORY JUDGMENT— BAYCO'S PRODUCTS ARE LICENSED

44. Plaintiff Bayco incorporates by reference the allegations contained in paragraphs 1 through 43 of the Complaint.

45. In the alternative, as Plaintiff Bayco purchased all of its LED's from Cree for all of its XPP-5450 Series Headlamp Products, with Cree being an LED cross-licensee of Defendant Philips on LED technologies, upon information and belief, Defendant Philips' rights in the Patents-in-Suit have been exhausted, and Plaintiff Bayco's LED Headlamp Products are already subject to the Cree—Defendant Philips LED patent cross-licensee.

46. Accordingly there is an actual and justiciable controversy between Plaintiff Bayco and Defendant Philips as to the effect of Defendant Philips' pre-existing cross-license with Cree, as applied to Plaintiff Bayco's LED based Headlamp Products.

47. Pursuant to the Federal Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, Plaintiff Bayco seeks a declaration that its XPP-5450 Series Headlamp Products are licensed

under the existing patent cross-license on LED technologies between Cree and Defendant Philips.

XII.

COUNT EIGHT—EXCEPTIONAL CASE

48. Plaintiff Bayco incorporates by reference the allegations contained in paragraphs 1 through 47 of the Complaint.

49. The foregoing actions of Defendant Philips warrant a court-ordered finding that this is an exceptional case.

50. Plaintiff Bayco seeks its reasonable attorneys' fees pursuant to 35 U.S.C. § 285.

XIII.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Bayco respectfully requests that this Court enter a judgment and Order as follows and for the following relief:

A. Declaring that Plaintiff Bayco does not infringe, contribute to or induce infringement of any valid and enforceable claim of the '648 Patent, the '774 Patent or the '136 Patent;

B. Declaring that the claims of the Patents-in-Suit are invalid or unenforceable;

C. Permanently enjoining Defendant Philips, their officers, agents, directors, servants, employees, subsidiaries and assigns on all those acting under the authority of or in privity with them or any of them from asserting or otherwise seeking to enforce the Patents-in-Suit against Plaintiff Bayco;

D. Declaring that Plaintiff Bayco's XPP-5450 Series Headlamp Products are licensed under the Cree-Defendant Philips LED technology cross-license;

E. Declaring that this case is exceptional pursuant to 35 U.S.C. § 285;

F. Awarding Plaintiff Bayco its attorneys' fees and costs of this action; and

G. Enter judgment in favor of Plaintiff Bayco for such other relief as the Court may deem just, proper and equitable.

XIV.

JURY DEMAND

Pursuant Rule 38(b) of the Federal Rules of Civil Procedure, Plaintiff Bayco hereby demands a trial by jury on all Counts.

Respectfully submitted,

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